IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 27322 of 2007(C)

OS.29/2006 of MUNSIFF COURT, PAYYOLI
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PETITIONERS:
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1. **KOTTAYIL THEKKEMARATH JANARDHANAN, S/O GOVINDA MARAR, RESIDING AT NERAVATH, MEPPAYUR AMSOM AND DESOM.**

2. **T.M.GEETHA, D/O GOVINDA MARAR, -DO- -DO-.**

BY ADV. SMT.SHAHNA KARTHIKEYAN
SRI.V.ARUN

RESPONDENTS:
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1. **KATTUMADATHUMANAKKAL AGNISARMAN NAMBOODIRI @ K.M.ANUJAN, S/O K.M.NARAYANAN NAMBOOTHIRIPAD, PERUMBADATH AMSOM, CHERUVAYA DESOM, PONNANI TALUK, MALAPPURAM DISTRICT.**

2. **K.M.ANILKUMAR, S/O KATTUMADATHUMANAKKAL NARAYANAN NAMBOODIRIPAD, -DO-...DO....**

3. **SATHEESH BABU, SREEKANDAMANASHALA KSHETHRAPARIPALANA COMMITTEE SECRETARY, MEPPAYUR, SREESADANAM MEPPAYYUR.**

4. **KUNNATH K. SREEDHARAN, S/O KELAPPAN, PRESENT SREEKANDAMANASALA KSHETHRAPARIPALANA COMMITTEE SECRETARY, MEPPAYUR.**

5. **LAND TRIBUNAL, KOZHIKODE.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

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W.P.(C) No.27322 OF 2007

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Dated this the 13th day of September 2007

JUDGMENT

This writ petition is filed to set aside Ext.P4 order passed by the Munsiff-Magistrate's Court, Payyoli in I.A.No.277 of 2007 in O.S.No.29 of 2006. It is an application filed by the plaintiffs for setting aside the Commissioner's report and plan. The dispute is between the plaintiffs and the temple authorities and the temple authorities would contend that it is a part and parcel of the temple and that the plaintiffs are not entitled to any relief, whereas the plaintiffs would contend that they are the tenants of the property entitled to fixity of tenure and therefore the defendants have no manner of right over the property. During the pendency of the suit, a Commissioner was appointed. He had inspected the property and had given a report stating that he was able to see a balikkallu(.....) on the eastern mud wall of the plaint schedule property. The Commissioner also reported that he had found the remnants of a floor of a building and opined that it was floor of an erstwhile temple. These two fact finding points are very crucial for the determination of the case. The Commissioner was

examined in the application and he had reiterated the very same stand. Other evidence was not let in. The fact whether those stones are balikkallu or the remnants of an old building are all matters which have to be considered in detail at the stage of evidence. Just because the court below has disposed of the application to set aside the Commissioner's report stating that there are no grounds to set aside, it shall not prevent the plaintiffs who are challenging the report from adducing evidence in support of their contention that it is not a balikkallu and that it is not the remnants of a temple. These two factors can be proved to be wrong by the plaintiffs by producing cogent evidence before court and at that stage, the court should not shut out the evidence on the ground that it has dismissed the application to set aside the Commissioner's report.

Reserving the right of the plaintiffs at the stage of trial, I dispose of the writ petition.

M.N.KRISHNAN, JUDGE

Cdp/-